UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

OREADER CALLAWAY, Plaintiff, v. CUMBERLAND COUNTY SHERIFF DEPARTMENT, et al, Defendants.	:	Civ. No. 14-4853 (NLH) OPINION

APPEARANCES:
Oreader Callaway, #934609/109763-B
New Jersey State Prison
P.O. Box 861
Trenton, NJ 08625
Plaintiff Pro se

HILLMAN, District Judge

On or about August 4, 2014, Plaintiff Oreader Callaway, a prisoner presently confined at the New Jersey State Prison in Trenton, New Jersey, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1). This case was twice previously administratively terminated for failure to satisfy the filing fee requirement. (ECF Nos. 3, 7). On or about June 29, 2015, Plaintiff submitted a request to reopen and a renewed application to proceed in forma pauperis. (EFC No. 10). The case was reopened for review by a judicial officer.

On July 8, 2015, the Court determined that Plaintiff had submitted a complete application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, and he was granted leave to proceed without prepayment of fees. (ECF No. 11). Plaintiff was informed that this case remained subject to sua sponte screening by the Court. See 28 U.S.C. §§ 1915(e)(2)(B); see also 28 U.S.C. § 1915A; 42 U.S.C. § 1997e.

The Court has had the opportunity to review the instant Complaint to determine whether it should be dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or because it seeks monetary relief from a defendant who is immune from suit pursuant to 28 U.S.C. § 1915(e)(2)(B). For the reasons set forth below, the Complaint will be dismissed for failure to state a claim.

I. BACKGROUND

Plaintiff's claims arise from an incident which occurred on April 25, 2014 while Plaintiff was detained in a Cumberland County Court holding cell. (Compl. 4, ECF No. 1). Specifically, Plaintiff states that he was shackled in a holding cell while awaiting a court appearance. Plaintiff contends that his legs became tangled in the shackles and he fell forward, breaking his hand on the "sink/toilet area in the holding cell." Id.

Plaintiff states that he "immediately notified Sheriff Officer Tescoroni as to the immediate swelling and pain, and

[he] asked to see medical personel [sic]." Id. Plaintiff states that he was told that, for procedural reasons, he "could not be sent back to the County Jail medical department to address this medical issue until [he was] at least seen by the Judge or released on postponement to a later date." Id. Plaintiff states that he spent at least two to three hours "suffering in pain[.]" Id.

Plaintiff seeks financial compensation for his pain and suffering in the amount of $75,000. He also would like to implement a change in the duration and practice of leg shackling to prevent future accidents; and requests an assurance that any medical issues that arise while prisoners are in a holding cell awaiting a court appearance will be immediately addressed.

Based on the factual allegations of the Complaint, the Court presumes that Plaintiff means to allege a Fourteenth Amendment violation due to inadequate medical care.[1] The caption

[1] Although Plaintiff does not specify whether he had been convicted or whether he was a pretrial detainee at the time of the incident in question, a review of the New Jersey Department of Corrections website indicates that Plaintiff was a pretrial detainee at the time he filed this Complaint. See https://www20.state.nj.us/DOC_Inmate. The Eighth Amendment protects the right of a convicted prisoner to receive adequate medical care. See Estelle v. Gamble, 429 U.S. 97, 103–04, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). But where, as here, the plaintiff is a pretrial detainee, the Eighth Amendment does not apply; instead, the plaintiff must plead his § 1983 claim under the Due Process Clause of the Fourteenth Amendment. See Tri Thanh Nguyen v. Franklin Cnty. Sheriffs Dep't, 512 F. App'x 188 (3d Cir.) cert. denied sub nom. Nguyen v. Franklin Cnty.

of Plaintiff's Complaint names the Cumberland County Sheriff Department and Sheriff Robert Augustino as defendants. (Compl. 1, ECF No. 1). However, the body of Plaintiff's Complaint (Compl. 3, ECF No. 1) lists Sheriff Augustino as the only defendant; and the factual allegations of the Complaint (Compl. 4, ECF No. 1) refer only to Sheriff Officer Tescoroni.

II. STANDARDS OF REVIEW

A. Sua Sponte Dismissal

Every complaint must comply with the pleading requirements of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citations omitted).

> While a complaint ... does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do ... . Factual allegations must be enough to raise a right to relief above the speculative level ... .

Sheriff's Dep't, 133 S. Ct. 2774, 186 L. Ed. 2d 224 (2013); Natale v. Camden Cnty. Corr. Facility, 318 F.3d 575, 581 (3d Cir. 2003) (citing City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983)); see also Bornstein v. Cnty. of Monmouth, No. 11-5336, 2015 WL 2125701, at *11 (D.N.J. May 6, 2015).

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted).

That is, a complaint must assert "enough facts to state a claim to relief that is plausible on its face." Id. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556). The determination of whether the factual allegations plausibly give rise to an entitlement to relief is "'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" Bistrian v. Levi, 696 F.3d 352, 365 (3d Cir. 2012) (citations omitted). Thus, a court is "not bound to accept as true a legal conclusion couched as a factual allegation," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. at 678 (citations omitted).

In determining the sufficiency of a pro se complaint, the Court must be mindful to accept its factual allegations as true, see James v. City of Wilkes-Barre, 700 F.3d 675, 679 (3d Cir. 2012), and to construe it liberally in favor of the plaintiff,

see Haines v. Kerner, 404 U.S. 519, 520-21 (1972); United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992).

In general, where a complaint subject to statutory screening can be remedied by amendment, a district court should not dismiss the complaint with prejudice, but should permit the amendment. Denton v. Hernandez, 504 U.S. 25, 34 (1992); Grayson v. Mayview State Hospital, 293 F.3d 103, 108 (3d Cir. 2002) (noting that leave to amend should be granted "in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment"), cited in Thomaston v. Meyer, 519 F. App'x 118, 120 n.2 (3d Cir. 2013); Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 453 (3d Cir. 1996).

B. Section 1983 Actions

A plaintiff may have a cause of action under 42 U.S.C. § 1983 for certain violations of his constitutional rights. Section 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ... .

Thus, to state a claim for relief under § 1983, a plaintiff must allege, first, the violation of a right secured by the Constitution or laws of the United States and, second, that the

alleged deprivation was committed or caused by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48, 108 S.Ct. 2250, 2255, 101 L.Ed.2d 40 (1988); Malleus v. George, 641 F.3d 560, 563 (3d Cir. 2011).

C. Actions for Inadequate Medical Care

The United States Court of Appeals for the Third Circuit has indicated that a pretrial detainee's right to adequate medical care should be analyzed under the well-settled standard established in Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), which provides that prison officials are required "to provide basic medical treatment to those whom it has incarcerated." Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999) (citing Estelle, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)). "It would be anomalous to afford a pretrial detainee less constitutional protection than one who has been convicted." Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1079–80 (3d Cir. 1976). Thus, at a minimum, the "deliberate indifference" standard of Estelle must be met. Montgomery v. Aparatis Dist. Co., No. 14-3257, 2015 WL 1600521, at *2 (3d Cir. Apr. 10, 2015); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979).

To state a claim, an inmate must satisfy an objective element and a subjective element. See Farmer v. Brennan, 511 U.S. 825, 834 (1994). Specifically, an inmate must allege: (1)

a serious medical need; and (2) behavior on the part of prison officials that constitutes deliberate indifference to that need. Estelle, 429 U.S. at 106; Natale v. Camden Cnty. Corr. Facility, 318 F.3d 575, 582 (3d Cir. 2003).

To establish deliberate indifference, a prisoner must show that the defendant was subjectively aware of the unmet serious medical need and failed to reasonably respond to that need. See Farmer, 511 U.S. at 837; Natale, 318 F.3d at 582. Deliberate indifference may be found where the prison official (1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) intentionally delays necessary medical treatment based on a non-medical reason; or (3) deliberately prevents a prisoner from receiving needed medical treatment. See Pierce v. Pitkins, 520 F. App'x 64, 66 (3d Cir. 2013) (citing Rouse, 182 F.3d at 197).

III. ANALYSIS

As an initial matter, it is unclear who Plaintiff intends to sue in this action. As set forth above, the caption of the Complaint names both the "Cumberland County Sheriff Department" and "Sheriff Robert Augustino." (Compl. 1, ECF No. 1). However, the "parties" section of the Complaint – specifically question 3(B) – lists Robert Augustino as the only defendant. (Compl. 3, ECF No. 1). Further confusing matters, the remainder of the Complaint is devoid of factual allegations as to either the

Cumberland County Sheriff Department or Robert Augustino; and, instead, references only Sheriff Officer Tescoroni. (Compl. 4, ECF No. 1).

Even assuming the existence of a serious medical need, Plaintiff has failed to allege any facts in the Complaint which indicate behavior on the part of the Cumberland County Sheriff Department or Robert Augustino which may constitute deliberate indifference to that need. See Estelle, 429 U.S. at 106; Natale, 318 F.3d at 582. Accordingly, to the extent Plaintiff meant to name the Cumberland County Sheriff Department and Robert Augustino as defendants, any claims against them must be dismissed for failure to state a claim.

Moreover, the Cumberland County Sheriff Department is a division of Cumberland County and, thus, is not a "person" subject to liability under § 1983. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); see also, Jackson v. City of Erie Police Dep't, 570 F. App'x 112, 114 (3d Cir. 2014); Stewart v. City of Atl. Police Dep't, No. 14-4700, 2015 WL 1034524, at *1 (D.N.J. Mar. 10, 2015) (collecting cases). Accordingly, even if Plaintiff had alleged facts relating to this entity, any claims against the Cumberland County Sheriff Department must be dismissed with prejudice. See Gonzalez v. Cape May Cnty., No. 12-0517, 2015 WL 1471814, at *4 (D.N.J. Mar. 31, 2015) (finding that plaintiff

could not sustain separate § 1983 claim against a sheriff's department because it was a subunit of the local municipality).

The Court notes that the proper defendant for a claim against a sheriff's department would be the municipality itself. See Jackson, 570 F. App'x 112; See also Bonenberger v. Plymouth Twp., 132 F.3d 20, 25 n. 4 (3d Cir. 1997) (Court "treat[s] the municipality and its police department as a single entity for purposes of section 1983 liability"). However, to state a claim against a municipality, a plaintiff must allege an unconstitutional policy or custom that would create municipal liability. See Monell v. Dep't of Social Servs. New York City, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

Although Plaintiff references a "procedure" in the "Statement of Claims" section of his Complaint (Compl. 4, ECF No. 1), he also seeks relief in the form of a change to the shackling practice, and references the way in which medical issues are addressed when they arise while prisoners are in a holding cell. Therefore, in addition to the fact that Plaintiff has not named Cumberland County as a defendant, the Court is unable to construe from the Complaint the precise policy or custom Plaintiff means to attack by way of this action. Accordingly, no cause of action has been alleged under Monell. See Hildebrand v. Allegheny County, 757 F.3d 99, 110–11 (3d Cir. 2014) (complaint must plead facts to support Monell liability);

McTernan v. City of York, Pa., 564 F.3d 636, 658 (3d Cir. 2009) (stating to satisfy pleading standard for Monell claim, complaint "must identify a custom or policy, and specify what exactly that custom or policy was"); Karmo v. Borough of Darby, No. 14–2797, 2014 WL 4763831, at *6 (E.D.Pa. Sept. 25, 2014) (same).

Finally, to the extent Plaintiff means to allege that Sheriff Officer Tescoroni is the prison official who acted with deliberate indifference to Plaintiff's serious medical need, Plaintiff has not named him as a defendant. Sheriff Officer Tescoroni is not listed in the caption; nor is he named in the section of the complaint wherein Plaintiff is asked to identify the defendants.

Therefore, the Complaint will be dismissed for failure to state a claim upon which relief can be granted. However, Plaintiff will be permitted to amend his Complaint. Denton, 504 U.S. at 34; Grayson, 293 F.3d at 108; Thomaston v. Meyer, 519 F. App'x at 120 n.2; Urrutia, 91 F.3d at 453.

IV. CONCLUSION

For the foregoing reasons, any claims against the Cumberland County Sheriff Department will be dismissed with prejudice. The remainder of the Complaint will be dismissed without prejudice for failure to state a claim. Because it is possible that Plaintiff may be able to amend or supplement his

complaint with facts sufficient to overcome the deficiencies noted herein, Plaintiff shall be given leave to file an application to reopen accompanied by a proposed amended complaint.[2]

An appropriate Order follows.

July 31, 2015

__s/ Noel L. Hillman_____
NOEL L. HILLMAN
United States District Judge

At Camden, New Jersey

[2] Plaintiff should note that when an amended complaint is filed, it supersedes the original and renders it of no legal effect, unless the amended complaint specifically refers to or adopts the earlier pleading. See West Run Student Housing Associates, LLC v. Huntington National Bank, 712 F.3d 165, 171 (3d Cir. 2013)(collecting cases); see also 6 CHARLES ALAN WRIGHT ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1476 (3d ed. 2008). To avoid confusion, the safer practice is to submit an amended complaint that is complete in itself. Id.